

Remarks

This response is provided in reply to an Office Action mailed **December 2, 2004**. Claims 1-4 and 6-27 remain pending with this response. In the Action, pending claims 1-4 and 6-27 were rejected under 35 USC §103(a) as being unpatentable over "well-known" applications of Microsoft Windows 95™ networking in view of various combinations of references. With this response, the rejection of such claims is respectfully traversed. In view of the following remarks, reconsideration of the application is respectfully requested.

§103(a) Rejection of Claims 1-4 and 6-27

On **page 2** of the Action, claims 1, 2, 6-8, 11, 14-17, and 20 were rejected under 35 USC §103(a) as being unpatentable over "well-known" applications of Microsoft Windows 95™ networking in view of wireless LANs, as exemplified by Stewart (US 5,633,888). The Action alleges that all of the claimed limitations of pending claims 1, 2, 6-8, 11, 14-17, and 20 are enabled by "well-known" applications of Microsoft Windows 95™ networking in view of Stewart (US 5,633,888). In response, Applicant respectfully asserts that such "well-known" applications cannot support an obviousness rejection because they fail to meet the legal burden required to qualify as "well-known" prior art.

Rejections that rely on "well known" prior art must meet a "substantial evidence" standard of review as to findings of fact. *In re Gartside*, 203 F.3d 1305, 1315 (Fed. Cir. 2000). Official notice unsupported by documentary evidence fails when the facts asserted to be "well-known" are not "capable of such instant and unquestionable demonstration as to defy dispute." *In re Ahlert*, 424 F.2d 1088, 1091 (CCPA 1970). In light of these standards, Applicant asserts that such alleged "well-known" applications of Microsoft Windows 95™ networking, without documentary

support, are not "capable of such instant and unquestionable demonstration as to defy dispute," and fail a substantial evidence standard of review.

On **page 2** of the Action, Examiner asserts that "well-known" applications of Microsoft Windows 95™ networking "directly receive a file from a remote device without prior knowledge of whether that file exists on the hard drive of a second computer." By way of example, Examiner suggests that performing a hard drive search for a particular file on a hard drive that is physically located on another PC followed by storing the file to a local hard drive demonstrates this particular application.

Such assertion lacks documentary authority and is not capable of such instant and unquestionable demonstration as to defy dispute. Applicant is not aware of Microsoft Windows 95™ networking applications that "directly receive a file from a remote device without prior knowledge of whether that file exists." Even Examiner's hard drive search example fails to demonstrate such an application, at least, because searching and storing a file is not analogous to directly receiving a file. As such, Examiner fails to show how Microsoft Windows 95™ networking applications "directly receive a file from a remote device without prior knowledge of whether that file exists."

Furthermore, Applicant notes that the Action fails to provide evidentiary support that Microsoft Windows 95™ networking applications qualify as prior art, as a matter of time, against the current application. Without documentary support, the state of the "well-known" art is subject to the possibility of rational disagreement among reasonable men and is not amenable to the taking of such notice.

On **page 3** of the Action, in rejecting the same set of claims, Examiner takes further Office Notice that as early as spring of 1997, while a college student using a dorm-room LAN, he

obtained MP3 music files in a peer-to-peer way with others on the local network. In response, Applicant asserts that such notice lacks evidentiary support and is not capable of such instant and unquestionable demonstration as to defy dispute. Applicant is unable to verify in any authoritative sense that such claim is authentic and relevant as prior art. Applicant believes that Examiner relies on personal knowledge to make such notice. Such knowledge requires an affidavit or declaration setting forth specific factual statements and explanation to support the finding. 37 CFR 1.104(d)(2).

Applicant respectfully requests that Examiner produce authority such as documentary evidence to show that alleged "well-known" facts regarding applications of Microsoft Windows 95™ networking are capable of instant and unquestionable demonstration as to defy dispute or, in the alternative, remove the 35 USC §103(a) rejection of claims 1, 2, 6-8, 11, 14-17, and 20.

Applicant notes that claims 3-4, 9-10, 12-13, 18-19, 21-24, and 26-27 depend from patentable base claims 1, 11, and 16. Patentable base claims 1, 11, and 16 overcome an obviousness rejection because the rejection fatally relies on "well-known" prior art that fails to meet the legal standard of review for "well-known" prior art. Thus, in addition to any independent bases for patentability, claims 3-4, 9-10, 12-13, 18-19, 21-24, and 26-27 are likewise patentable by virtue of at least their dependence on patentable base claims 1, 11, and 16. Accordingly, Applicant respectfully requests that the §103(a) rejection of such claims be withdrawn.

Applicant respectfully submits that independent claim 25 enjoys features analogous to those presented above in claim 11. Accordingly, Applicant respectfully submits that claim 25 is similarly patentable using arguments analogous to those presented above for claim 11. As such, Applicant respectfully requests that the §103(a) rejection of such claim be withdrawn.

Conclusion


The foregoing is submitted as a full and complete response to the Office Action mailed **December 2, 2004**. In view of the foregoing remarks, Applicant respectfully submits that pending claims 1-4 and 6-27 are in condition for allowance and a notification of such allowance is respectfully requested.

Should it be determined that an additional fee is due under 37 CFR §§1.16 or 1.17, or any excess fee has been received, please charge that fee or credit the amount of overcharge to deposit account #50-0221.

If the Examiner believes that there are any informalities which can be corrected by an Examiner's amendment, a telephone call to the undersigned at 503.439.8778 ext 235 is respectfully solicited.

Respectfully submitted,
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